

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

DOMINIQUE TABB,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-11-433-RAW-SPS
)	
CLAUDE JONES, ET AL.,)	
)	
Defendant.)	

**MOTION TO STAY PROCEEDINGS AND APPLICATION FOR
ORDER REQUIRING SPECIAL REPORT AND BRIEF IN SUPPORT**

The Defendants, by and through their attorney of record, respectfully request the Court to stay the proceedings in the above styled matter, which includes Defendants' Answers and/or dispositive motions which is currently due on January 31, 2012, and order the Defendant Claude Jones, Administrator, LeFlore County Detention Center, to submit a Special Report pursuant to *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978), as more fully set forth in the brief herein.

BRIEF IN SUPPORT

In *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978), the Tenth Circuit approved the practice of a district court ordering corrections officials "to undertake a review of the subject matter of the Complaint" in order to provide the court with additional information for the processing of the prisoner's claim. 570 F.2d at 319. In *Martinez*, the Tenth Circuit held that the district court properly dismissed the prisoner's claim as being frivolous under 28 U.S.C. 1915 after ordering such a report. The *Martinez* procedure has been regularly upheld and recommended. See,

Johnson v. Parke, 642 F.2d 377, 378 (10th Cir. 1981); *Robinson v. Benton*, 579 F.2d 70 (10th Cir. 1978); *Martinez v. 2 Chavez*, 574 F.2d 1043 (10th Cir. 1973) (review of county jail conditions); *Wiggins v. New Mexico State Supreme Court Clerk*, 664 F.2d 812, 817 (10th Cir. 1981): ("we suggest that the procedures, order and practice expressly approved by this Court in *Martinez v. Aaron*, [citation omitted] may be applicable"). See also, *Annot., Standards for Determining Whether Proceedings in Forma Pauperis are Frivolous and Thus Subject to Dismissal Under 28 U.S.C.S. ' 1915(d)*, 52 A.L.R Fed. 679, 684-86 (1981); *Hardwick v. Ault*, 517 F.2d 295, 298 (5th Cir. 1975) (discussion of "special reports"). Plaintiff, an inmate currently in the custody of the Davis Correctional Facility in Holdenville, Oklahoma, and appearing pro se, alleges violations of his Constitutional rights which allegedly occurred during his incarceration in the LeFlore County Detention Center ("LCDC"). This Court would benefit from a Special Report which addresses the facts of the incidents alleged and the Defendant Administrator's jail policy relevant to Plaintiff's Complaint. The Tenth Circuit has expressly approved the use of Special Reports for the purpose of developing a record for determining "which facts alleged in the Complaint were relevant, accurate, and subject to bona fide dispute." *Martinez v. Chavez*, 547 F.2d at 1046. The facts of the incidents complained of by the Plaintiff are not before the Court, thus necessitating a Special Report. *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981), cert. denied, 405 U.S. 985, 101 S.Ct. 1524, 67 L.Ed.2d 821 (1981).

The Defendant therefore urges the Court to issue an Order staying proceedings herein and requiring the Defendant Claude Jones, Administrator, LCDC, to submit a Special Report pursuant to *Martinez v. Aaron, supra*.

Respectfully submitted,

s/ Timothy M. Melton

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ATTORNEY FOR DEFENDANT
CLAUDE JONES, ET AL.

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2012, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing.

I further certify that on the same date, I served the attached document by U.S. first class mail, postage prepaid, on the following, who is not a registered participant of the ECF System:

CCA Davis Correctional Center
Dominique Tabb #495135
6888 East 133rd Road
Holdenville, OK 74848-9033

s/ Timothy M. Melton

Timothy M. Melton